

### REMARKS

This Amendment is in response to the Office Action dated April 4, 2006. In the Office Action, claims 1-9, 20 and 27-34 were rejected, claims 35-40 are allowed and claims 10, 11 and 33 were objected to. With this Amendment, claims 1, 20 and 34 are amended. Reconsideration and allowance of claims 1-11, 20 and 27-40 are respectfully requested.

#### Claim Objections

Claim 34 was objected to as being a substantial duplicate of claim 11. Accordingly, claim 34 has been amended to depend from claim 20 and, therefore, is no longer a substantial duplicate of claim 11.

#### Rejections under 35 U.S.C. § 102

Claims 1-8, 20, 27-32 and 34 were rejected under 35 U.S.C § 102(b) as being anticipated by Yanagi et al. (U.S. 4,893,320). Applicant traverses this rejection, and respectfully requests reconsideration in view of the amendments and following comments.

It is respectfully submitted that the Yanagi et al. reference fails to teach or suggest all of the claim elements of independent claims 1 and 20. Amended claims 1 and 20 recite “an inner vessel containing a first liquid” and “an outer vessel containing a second liquid.” Claim 1 also recites that “the first liquid has a first dissolved gas concentration of a first gas and the second liquid has a second dissolved gas concentration of a second gas, the first dissolved gas concentration is different than the second dissolved gas concentration.” Claim 20 also recites that “the first liquid has a dissolved gas concentration of a first gas that is greater than a dissolved gas concentration of a second gas in the second liquid.” It is respectfully pointed out that the Examiner is unable to point to any features in the specification of the Yanagi et al. reference that include the above-discussed features claimed in claims 1 and 20. Instead, the Examiner states that “Yanagi et al. discloses [sic] apparatus capable of having different air concentration liquid.” The Examiner further states that “claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function.”

The Applicant respectfully disagrees with the Examiner's reasons for rejection. The statement that the Yanagi et al. reference is capable of having different air concentration liquid is irrelevant towards patentability. An element can be read into the prior art only when it is necessarily present, but not expressly described or recognized. The Examiner has stated that the Yanagi et al. reference is merely "capable" of having different air concentration liquid. By using the term "capable," the Examiner is stating that there is a possibility that the Yanagi et al. reference has different air concentration liquid. A claim element "may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Oelrich*, 212 USPQ 323, 326 (C.C.P.A. 1981). Claims 1 and 20 have been amended to claim structural limitations, which are distinguishable from the prior art. Therefore, the Examiner's statement regarding structural claim language versus functional claim language is moot. It is respectfully submitted that independent claims 1 and 20 are allowable over the Yanagi et al. reference as well as dependent claims 2-8, which depend on an allowable base claim 1 and dependent claims 27-32 and 34 which depend on allowable base claim 20.

Claims 1-4, 6-9, 20, 27-30, 32 and 34 were rejected under 35 U.S.C § 102(b) as being anticipated by Tanaka et al. (U.S. 6,138,698). Applicant traverses this rejection, and respectfully requests reconsideration in view of the amendments and following comments.

It is respectfully submitted that the Tanaka et al. reference fails to teach or suggest all of the claim elements of independent claims 1 and 20. It is respectfully pointed out that the Examiner is unable to point to any features in the specification of the Tanaka et al. reference that include the above-discussed features claimed in claims 1 and 20. Instead, the Examiner states that "Tanaka et al. disclosed apparatus [sic] capable of having different air or nitrogen concentration liquid." The Examiner further states that "claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function."

The Applicant respectfully disagrees with the Examiner's reasons for rejection. The statement that Tanaka et al. is capable of having different air concentration liquid is irrelevant towards patentability. An element can be read into the prior art only when it is necessarily present, but not expressly described or recognized. The Examiner has stated that Tanaka et al. is merely

“capable” of having different air concentration liquid. By using the term “capable,” the Examiner is stating that there is a possibility that the Tanaka et al. reference has different air concentration liquid. As noted above, the mere fact that a certain thing may result from a given set of circumstances is not sufficient in establishing an element. Claims 1 and 20 have been amended to claim structural limitations, which are distinguishable from the prior art. Therefore, the Examiner’s statement regarding structural claim language versus functional claim language is moot. It is respectfully submitted that independent claims 1 and 20 are allowable over the Tanaka et al. reference as well as dependent claims 2-4, 6-9 which depend on an allowable base claim 1 and claims 27-30, 32 and 34, which depend on allowable base claim 20.

Claims 1-5, 7-9, 20, 27-32 and 34 were rejected under 35 U.S.C § 102(b) as being anticipated by Saito et al. (JP 11008214). The Applicant traverses this rejection, and respectfully requests reconsideration in view of the amendments and following comments.

It is respectfully submitted that the Saito et al. reference fails to teach or suggest all of the claim elements of independent claims 1 and 20. It is respectfully pointed out that the Examiner is unable to point to any features in the specification of the Saito et al. reference that include the above-discussed features claimed in claims 1 and 20. Instead, the Examiner states that “Saito et al. disclosed apparatus [sic] capable of having different air or nitrogen concentration liquid.” The Examiner further states that “claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function.”

The Applicant respectfully disagrees with the Examiner’s reasons for rejection. The statement that the Saito et al. reference is capable of having different air concentration liquid is irrelevant towards patentability. An element can be read into the prior art only when it is necessarily present, but not expressly described or recognized. The Examiner has stated that Saito et al. is merely “capable” of having different air concentration liquid. By using the term “capable,” the Examiner is stating that there is a possibility that the Saito et al. reference has different air concentration liquid. As noted above, the mere fact that a certain thing may result from a given set of circumstances is not sufficient in establishing an element. Claims 1 and 20 have been amended to claim structural limitations, which are distinguishable from the prior art. Therefore, the

Examiner's statement regarding structural claim language versus functional claim language is moot. It is respectfully submitted that independent claims 1 and 20 are allowable over the Saito et al. reference as well as dependent claims 2-5, 7-9 which depend on an allowable base claim 1 and claims 27-32 and 34, which depend on allowable base claim 20.

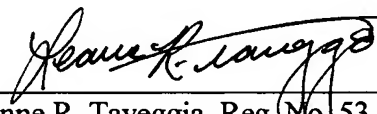
In view of the above comments and remarks, it is respectfully submitted that claims 1-11, 20 and 27-40 are in condition for allowance. Reconsideration and favorable action is respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: \_\_\_\_\_

  
Leanne R. Taveggia, Reg. No. 53,675  
900 Second Avenue South, Suite 1400  
Minneapolis, Minnesota 55402-3244  
Phone: (612) 334-3222  
Fax: (612) 334-3312

LRT/jme